



DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 900

[Docket No. AMS-FV-14-0072; FV14-900-2 PR]

**Clarification of United States Antitrust Laws, Immunity,
and Liability under Marketing Order Programs**

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposal invites comments on an amendment to the general regulations for federal fruit, vegetable, and specialty crop marketing agreements and marketing orders that would accentuate the applicability of U.S. antitrust laws to marketing order programs' domestic and foreign activities. This action would also advise marketing order board and committee members and personnel of the restrictions, limitations, and liabilities imposed by those laws.

DATES: Comments must be received by [INSERT DATE 30 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Docket Clerk, Marketing Order and Agreement

Division, Fruit and Vegetable Program, AMS, USDA, 1400
Independence Avenue SW, STOP 0237, Washington, DC 20250-
0237; Fax: (202) 720-8938; or Internet:
<http://www.regulations.gov>. All comments should reference
the document number and the date and page number of this
issue of the **Federal Register** and will be made available
for public inspection in the Office of the Docket Clerk
during regular business hours or can be viewed at:

<http://www.regulations.gov>. All comments submitted in
response to this proposal will be included in the record
and will be made available to the public. Please be
advised that the identity of the individuals or entities
submitting the comments will be made public on the internet
at the address provided above.

FOR FURTHER INFORMATION CONTACT: Geronimo Quinones,
Marketing Specialist, or Michelle P. Sharrow, Rulemaking
Branch Chief, Marketing Order and Agreement Division, Fruit
and Vegetable Program, AMS, USDA, 1400 Independence Avenue
SW, Stop 0237, Washington, DC 20250-0237; Telephone: (202)
720-2491, Fax: (202) 720-8938, or E-mail:
Geronimo.Quinones@ams.usda.gov or
Michelle.Sharrow@ams.usda.gov.

Small businesses may request information on complying with this regulation by contacting Jeffrey Smutny, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: Jeffrey.Smutny@ams.usda.gov.

SUPPLEMENTARY INFORMATION: This proposal is issued under the general regulations for federal marketing agreements and orders (7 CFR part 900), effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act." This action would add a new § 900.202 (Restrictions applicable to Committee personnel) under "Subpart - Miscellaneous Regulations" to accentuate the applicability of U.S. antitrust laws to marketing order program activities.

The Department of Agriculture (USDA) is issuing this proposed rule in conformance with Executive Orders 12866, 13563, and 13175.

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. This proposed rule is not intended to have retroactive effect.

The Act provides that administrative proceedings must

be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

Federal marketing order boards and committees have always been subject to U.S. antitrust laws. These boards and committees work with USDA in administering marketing order programs which, among other things, authorizes them, with approval of the Secretary, to establish and promote a program's domestic and foreign marketing activities. The Act immunizes board and committee members and employees from prosecution under U.S. antitrust laws so long as their conduct is authorized by the Act or provisions of a

marketing order. This proposal is intended to accentuate the applicability of U.S. antitrust laws to marketing order board and committee members and personnel in light of changing global marketing and production trends as well as to advise boards and committees of the restrictions, limitations, and liabilities of those laws. Under these laws, Committee members and employees may not engage in any unauthorized agreement or concerted action that unreasonably restrains United States domestic or foreign commerce. Failing to adhere to antitrust laws may lead to prosecution under the antitrust laws by the United States Department of Justice and/or suit by injured private persons seeking treble damages, and may also result in expulsion of members from the Committee or termination of employment with the Committee.

Initial Regulatory Flexibility Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order

that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 1,090 handlers who are subject to regulation under the 28 federal marketing order programs and approximately 33,100 producers in the regulated areas. Small agricultural service firms are defined by the Small Business Administration (SBA) as those having annual receipts of less than \$7,000,000, and small agricultural producers are defined as those having annual receipts of less than \$750,000 (13 CFR 121.201). USDA estimates that many of these handlers and producers may be classified as small entities. This rule would accentuate the applicability of U.S. antitrust laws to marketing order programs' domestic and foreign activities. This action would also advise marketing order board and committee members and personnel of the restrictions, limitations, and liabilities imposed by those laws.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction

Act of 1995 (44 U.S.C. 3501-3520).

AMS is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this proposed rule.

AMS has discussed the changes to the regulations with all marketing order board and committee staff that it oversees. Moreover, AMS conducted refresher training on antitrust laws for marketing order board and committee staff and officers at the Marketing Order Management Conference on September 23-24, 2014. Finally, interested persons are invited to submit comments on this proposed rule, including the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at:
www.ams.usda.gov/MarketingOrdersSmallBusinessGuide. Any questions about the compliance guide should be sent to

Jeffrey Smutny at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 30-day comment period is provided to allow interested persons to respond to this proposal. Thirty days is deemed appropriate because federal marketing order boards and committees have always been subject to U.S. antitrust laws. AMS is simply updating the regulations to reemphasize the applicability of U.S. antitrust laws in light of global marketing and production trends. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 900

Administrative practice and procedure, Freedom of information, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth above, 7 CFR part 900 is proposed to be amended as follows:

PART 900 - GENERAL REGULATIONS

1. The authority citation for 7 CFR part 900 continues to read as follows:

Authority: 7 U.S.C. 601-674 and 7 U.S.C. 7401.

Subpart - Miscellaneous Regulations

2. The authority citation for Subpart - Miscellaneous Regulations continues to read as follows:

Authority: Sec. 10, 48 Stat. 37, as amended; 7 U.S.C. 610.

3. Add new section 900.202 to read as follows:

§ 900.202 Restrictions applicable to Committee personnel.

Members and employees of Federal marketing order boards and committees are immune from prosecution under the United States antitrust laws only insofar as their conduct in administering the respective marketing order is authorized by the Agricultural Marketing Agreement Act of 1937, 7 U.S.C. 601-674, or the provisions of the respective order. Under the antitrust laws, Committee members and employees may not engage in any unauthorized agreement or concerted action that unreasonably restrains United States domestic or foreign commerce. For example, Committee members and employees have no authority to participate, either directly or indirectly, whether on an informal or formal, written or oral basis, in any bilateral or international undertaking or agreement with any competing foreign producer or seller or with any foreign government, agency, or instrumentality acting on behalf of competing foreign producers or sellers to (a) raise, fix, stabilize,

or set a floor for commodity prices, or (b) limit the quantity or quality of commodity imported into or exported from the United States. Participation in any such unauthorized agreement or joint undertaking could result in prosecution under the antitrust laws by the United States Department of Justice and/or suit by injured private persons seeking treble damages, and could also result in expulsion of members from the Committee or termination of employment with the Committee.

Dated: April 30, 2015

Rex A. Barnes
Associate Administrator
Agricultural Marketing Service

BILLING CODE 3410-02 P

[FR Doc. 2015-10447 Filed: 5/5/2015 08:45 am; Publication Date: 5/6/2015]